

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

REC'D 14 SEP 2005

W PCT

PCT

To:

see form PCT/ISA/220

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/US2005/00546

International filing date (day/month/year)
06.01.2005

Priority date (day/month/year)
07.01.2004

International Patent Classification (IPC) or both national classification and IPC
C07K16/00, C12N15/13

Applicant
CHIRON CORPORATION

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☒ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US2005/000546

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
☒ a sequence listing
☐ table(s) related to the sequence listing
 - b. format of material:
☒ in written format
☒ in computer readable form
 - c. time of filing/furnishing:
☒ contained in the international application as filed.
☒ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

Box No. II Priority

1. ☒ The validity of the priority claim has not been considered because the International Searching Authority does not have in its possession a copy of the earlier application whose priority has been claimed or, where required, a translation of that earlier application. This opinion has nevertheless been established on the assumption that the relevant date (Rules 43*bis*.1 and 64.1) is the claimed priority date.
2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.
3. Additional observations, if necessary:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
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Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application,
- ☒ claims Nos. 1,2,9-11,89-106

because:

- ☒ the said international application, or the said claims Nos. 89-106 relate to the following subject matter which does not require an international preliminary examination (*specify*):

see separate sheet

- ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
- ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
- ☒ no international search report has been established for the whole application or for said claims Nos. 1,2,9-11
- ☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:
 - the written form ☐ has not been furnished
 - ☐ does not comply with the standard
 - the computer readable form ☐ has not been furnished
 - ☐ does not comply with the standard
- ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.
- ☐ See separate sheet for further details

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US2005/000546

Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	3,4,12-76,107-109,125-140,154-161
	No: Claims	5-8,77-106,110-124,141-153
Inventive step (IS)	Yes: Claims	
	No: Claims	3-8,12-161
Industrial applicability (IA)	Yes: Claims	3-8,12-88,107-161
	No: Claims	

2. Citations and explanations

see separate sheet

Box No. VI Certain documents cited

1. Certain published documents (Rules 43bis.1 and 70.10)

and /or

2. Non-written disclosures (Rules 43bis.1 and 70.9)

see form 210

III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The subject-matter of claims 1, 2 and 9-11 has not be searched. Consequently, an opinion with regard to novelty, inventive step and industrial applicability for said subject-matter cannot be established.
2. Claims 89-106 relate to subject-matter considered by this Authority to be covered by the provisions of Rule 67.1(iv) PCT. Consequently, no opinion will be formulated with respect to the industrial applicability of the subject-matter of these claims (Article 34(4)(a)(I) PCT).

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Reference is made to the following documents:

D1: WO 96/08565

D2: WO 2004/045532

2. D1 describes the antibody MC3, variants of said antibody, including humanized versions of it. Methods for the humanization of murine monoclonal antibodies is mentioned in D1. Moreover, the use of these humanized antibodies in diagnostic, prognostic or therapeutic applications is described in D1 (abstract; page 13, line 6 to page 25; page 31, line 24 to page 35, line 24; examples 1-13).

MC3 is an antibody which binds to a linear epitope of M-CSF and inhibits its activity. Thus, in view of D1, the subject-matter of claims 5-8, 77-106, 110-124 and 141-153 is not novel (Article 33(2) PCT).

3. The murine antibody RX1 having the heavy chain amino acid sequence of SEQ ID No.2 and the light chain amino acid sequence of SEQ ID No.4 is known in the art. Humanization and human engineering methods of antibodies are well-known in the

art (see e.g. D1 or D2). Thus, the skilled person, aware of the commercially available antibodies specifically binding to M-CSF, such as the RX1 antibody, and aware of the connection between M-CSF and osteoclast formation and cancer metastasis, by applying common knowledge and routinely used techniques, would automatically and in a straightforward manner come to the subject-matter of claims 3, 4, 12-76, 107-109, 125-140 and 154-161. Therefore, said subject-matter is not inventive (Article 33(3) PCT).

4. The attention of the Applicant is drawn to the fact that a reply to this opinion is only expected if he intends to file a Chapter II demand.

VI. Certain documents cited

Certain published documents (Rule 70.10)

1. WO 2004/045532
2. GB-A-2 405 873